

PRAGYA BHADANI AND ANR. VS. FATEH CHAND DAMMANI AND ANR.

DATE OF JUDGMENT                :::                7.2.2007

Mr. DP Sharma for the appellant.

This appeal has been preferred against the order of the learned Single Judge who has been pleased to allow the writ petition filed by the respondent No.1- namely Dammani Balika Vidya Mandir after holding therein that the respondents who are appellants herein were not entitled to continue on the post of teachers on a regular basis as they had failed to qualify in the interview which had been conducted for selection of teachers on a regular basis.

The appellants had initially moved the Rajasthan Non-Government Educational Institutions Tribunal, Jaipur claiming that they should be regularised

on the post of teachers after which they should be granted the regular scale of pay. The Tribunal allowed the application of the appellants herein against which the respondent No.1-the institution filed a writ petition before the learned Single Judge challenging the order of the Tribunal. The learned Single Judge, having analysed the material on record, arrived at a finding that the respondent Nos.2 & 3/appellants herein participated in the selection process knowing fully well that if they did not get selected, they had to give way to the regularly selected candidates. It is an admitted position that two other candidates namely Narendra Kaur and Sashi Bhalla secured more marks in the selection process than the appellants herein and therefore the respondents were not selected as the other two candidates were selected and as they were not selected, the question of grant of regular scale of pay did not arise at all.

Assailing the order of the learned Single Judge it was vehemently contended that the services of the appellants were terminated without complying the provisions of Section 18 of the Rajasthan Non-Government Educational Institution Act, 1989 and Rule 39 of the

Rajasthan Non-Government Educational Institution Rules 1993 and hence the regular scale of pay should have been granted to the appellants. Elaborating his argument, it was further contended that out of four posts of teachers, for which selection process had been undertaken by the respondent-institution, only two posts had been filled up by the authorities and therefore the appellants had a right to continue on their post.

Having heard learned counsel for the appellant and on perusal of the reasonings assigned by the learned Single Judge, we do not feel impressed with the argument advanced by the counsel for the appellants as it is not a case where the appellants' temporary appointment was terminated on getting the regularly selected candidates. It is a case in fact where the appellants had participated in the selection process and had appeared in the interview which were held for selecting the teachers who were to be appointed on regular basis. The appellants along with other candidates had participated in the selection process and thereafter the appellants did not secure more marks than the other two candidates. Thereafter, if they were denied appointment on regular

basis, we do not see any legal ground to uphold this contention. However, the contention to the effect as to whether they should have been allowed to continue on temporary basis if two other posts were available is a matter which had to be considered by the authorities as the appellants had not moved the Tribunal with the prayer that they should have been allowed to continue on temporary basis if they failed to secure an order of regular selection and the regular scale of pay. The appellants came out with a specific case that they should be granted regular appointment with the regular scale of pay and that cannot be allowed to be claimed as it could be proved that they had no right to secure the appointment on regular basis as they did not succeed in the selection process. At the appellate stage, they cannot be permitted to mould the relief by requesting that the appellate Court should permit them to continue on temporary basis as this was never their case before the Courts below.

However, in the interest of equity, we permit the appellants to approach the authorities of the institution and it is for them to consider whether they would permit the appellants to continue on temporary

basis in the institution or not. A positive direction cannot be issued in this regard and will have to be left to the discretion of the school-authorities. The appeal, under the circumstance, stands dismissed.

(K.C.SHARMA)J.

(GYAN SUDHA MISRA)J.

PCG